



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/018,896	12/14/2001	Armin Rettig	FA-1047	6106

7590 06-07/2004
E. I. du Pont de Nemours & Co.
Legal /Patent Records Center
Barley Mill Plaza
25/1128
Wilmington, DE 19805

EXAMINER

MICHENER, JENNIFER KOLB

ART UNIT	PAPER NUMBER
----------	--------------

1762

DATE MAILED: 06/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/018,896

Applicant(s)

RETTIG ET AL.

Examiner

Jennifer K. Michener

Art Unit

1762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's confirmation of the election without traverse of claims 1-32 in the paper of 4/8/04 is acknowledged.

Double Patenting

2. The rejection of claim 10 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,531,189 has been withdrawn in light of Applicant's terminal disclaimer.

Claim Rejections - 35 USC § 103

3. Claims 10-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fujisawa et al. (4,960,611).

Examiner maintains the rejection.

Response to Arguments

4. Applicant's arguments filed 4/8/2004 have been fully considered but they are not persuasive.

Applicant argues that Fujisawa is fundamentally different from the Applicant's invention for various reasons.

Art Unit: 1762

Examiner disagrees and maintains the rejection. Applicant's arguments are addressed individually herein.

Regarding Applicant's argument that Fujisawa's repair method is used only for defects arising from adhesion of dust particles, oil droplets, and the like, Examiner notes that the source of the "defective area" of claim 1 is not specified. A dust particle in the lacquer coating would qualify as the claimed "defective area". Additionally, the instant specification discloses that a defect type that may be treated by the instant invention includes "dirt", similar to Fujisawa's dust particle.

Applicant argues that the "solid" composition or "palletized" composition embodiments of Fujisawa do not meet Applicant's limitation of "powder" and cites several embodiments of Fujisawa's invention that use backing layers or compressed powders to show that Fujisawa teaches away from the present invention.

While Examiner acknowledges the various embodiments of Fujisawa which may not meet the limitations of Applicant, Examiner notes that only one embodiment of Fujisawa must teach Applicant's invention. Other embodiments are merely exemplary. Examiner maintains that the solid embodiment of Fujisawa meets the limitation of Applicant. Even when the powder is applied to a backing sheet, Examiner notes that the claim meets the limitation of "applying a powder coating" because the backing sheet merely provides the means for application of the powder. In the case of the pelletized embodiment, Examiner notes that powders compressed into pellets of a larger size would still be

Art Unit: 1762

considered a powder of a larger diameter. Lastly, Examiner cites col. 3, line 62, in which Fujisawa teaches a number of phenomena by which his invention is performed, such as the “agglomeration of base resin particles, forming a continuous coating”. This last teaching of “particles” provides a “powder coating” as required by Applicant.

Applicant argues that his powder is “flowable” unlike Fujisawa’s. He admits that each particle is not flowable, but that the composition as a whole is flowable.

Examiner notes that the claim does not require flowability.

However, if Applicant were to add such a limitation, Examiner notes that Fujisawa teaches the use of the composition as a liquid, which is flowable, and the use of water in the “solid” embodiment (col. 3, lines 14 and 25). Since Applicant also teaches the use of water in his powder composition (when a slurry is used), Fujisawa’s powder would inherently flow in the same manner as Applicant’s when supplied in the aqueous medium.

Applicant argues that his method is useful in repairing horizontal or vertical surfaces, which is more versatile than Fujisawa’s method since a laser is used to melt the composition of Fujisawa and gravity would cause the melting composition to flow downward instead of into the defect cavity.

Examiner notes that the claim does not require the use of his method on vertical surfaces. Additionally, Applicant also requires “melting” of his repair composition which, like Fujisawa, may be applied in an aqueous slurry (p. 4 of the instant specification

Art Unit: 1762

teaches that "powder" is inclusive of an aqueous slurry thereof; see also claim 16).

Therefore, the application of an aqueous slurry by Applicant or the application of NIR to melt the powder of Applicant would produce the same limitations on vertical application as allegedly produced by Fujisawa.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

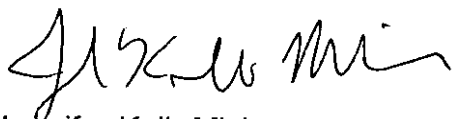
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer K Michener whose telephone number is (571) 272-1424. The examiner can normally be reached on Monday through Thursday and alternate Fridays.

Art Unit: 1762

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shrive P. Beck can be reached on 571-272-1415. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jennifer Kolb Michener
Patent Examiner
Technology Center 1700
June 2, 2004